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HEARINGS CLERK
EPA--REGION 10

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:)
)
Lower Big Creek Tailings Pond,)
Shoshone County, Idaho)
)
Sunshine Precious Metals, Inc.)
)
)

DOCKET NO. CERCLA-10-2002-0093

**ADMINISTRATIVE ORDER
ON CONSENT FOR ACCESS**

WHEREAS, Sunshine Precious Metals, Inc. ("Metals") is the Owner and Operator of the former Lower Big Creek Tailings Pond (the "Site") which is located in Shoshone County, Idaho, and is a part of the Bunker Hill Facility, a Superfund site listed on the National Priorities List in 1983;

WHEREAS, the United States and Coeur d'Alene Tribe are parties to a Consent Decree entered in January 2001 by the United States District Court for the District of Idaho, No. 96-0122-N-EJL and No. 91-0342-N-EJL, resolving claims by the United States and the Tribe against Metals and its parent Sunshine Mining and Refining Company for response costs incurred or to be incurred at the Bunker Hill Facility under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607, and natural resource damages at the Bunker Hill Facility under Section 107 of CERCLA, 42 U.S.C. § 9607, and Section 311 of the Clean Water Act, 33 U.S.C. § 1321;



1 WHEREAS, in the aforementioned Consent Decree the United States and Tribe
2 reserved their claims under CERCLA for areas within the real property owned or controlled
3 by Metals within the Facility, including the Site relevant to this Administrative Order on
4 Consent for Access;

5 WHEREAS, Metals has ceased operations at the Sunshine Mine pending a
6 substantial increase in silver prices, and has no employees on its properties other than those
7 assigned to maintain security;

8 WHEREAS, the United States Environmental Protection Agency ("EPA") and
9 the Idaho Department of Environmental Quality ("IDEQ") have requested access from Metals
10 to use the Site as a repository ("the Repository"), and to deposit onto the Site soils and
11 sediments from residential, commercial and common use areas in the Bunker Hill Facility that
12 are contaminated with mining wastes containing hazardous substances such as cadmium, lead
13 and zinc;

14 WHEREAS, the excavation and disposal of hazardous soils and sediments is
15 being undertaken as a removal action pursuant to EPA's authority under the Comprehensive
16 Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601, et seq
17 ("CERCLA");

18 WHEREAS, EPA will be responsible for all Repository operations at this Site as
19 discussed in the Order;

20 WHEREAS, this CERCLA action is being conducted by EPA in accordance
21 with the National Oil and Hazardous Waste Pollution Contingency Plan ("NCP"), and the
22 NCP establishes no independent requirements for Metals beyond the terms of this Order in
23 accepting the contaminated soils and sediments excavated pursuant to this CERCLA action,
24 and therefore, in providing access to the Property for the disposal of hazardous substances and
25 otherwise complying with the terms of this Order accepting these soils and sediments for
26 disposal; and complying with the terms of this Order, Metals is acting in accordance with the
27 NCP;

1 WHEREAS, the CERCLA removal action being conducted by EPA responds to
2 releases or potential releases of hazardous substances from mining activities in the Coeur
3 d'Alene Basin, and EPA believes that releases or threatened releases of hazardous substances
4 from those mining activities creates a danger to public health or welfare or the environment;

5 WHEREAS, Metals is voluntarily participating in this response action and is
6 concerned that its voluntary participation in this effort not subject it to liability under
7 CERCLA or the Resource Conservation and Recovery Act ("RCRA") for releases or
8 threatened releases of hazardous substances, pollutants, or contaminants for which it would
9 not otherwise be liable but for participation in this effort;

10 WHEREAS, IDEQ intends to purchase the Site from Metals within eighteen
11 months of the effective date of this Order, and such intention is contingent on subsequent
12 conditions, including but not limited to: establishment of a purchase price (which shall be fair
13 market value of the Site less the actual cost to EPA or IDEQ to design and construct a
14 disposal cell within the Site to contain certain Metals materials); survey of the Site by IDEQ;
15 performance of any due environmental diligence review of the Site deemed appropriate by
16 IDEQ; final approval by IDEQ and EPA of a cooperative agreement providing for the long
17 term operation and maintenance of the Site, match and credit and other appropriate CERCLA
18 assurances and issues; and, appropriate IDEQ authority and funding;

19 WHEREAS EPA intends to use the Site as a repository for waste materials,
20 including waste materials removed from the Sunshine Antimony Plant;

21 NOW THEREFORE, EPA, IDEQ and Metals are entering into this
22 Administrative Order on Consent for Access ("Order").

23 I. JURISDICTION AND GENERAL PROVISIONS

24 1. This Order is issued pursuant to the authority vested in the President of the
25 United States by Sections 104, 106(a) and 107 of CERCLA, as amended, 42 U.S.C. §§ 9604,
26 9606, and 9607, and delegated to the Administrator of the EPA by Executive Order 12580,
27 January 23, 1987, 52 Federal Register 2923, and further delegated to the EPA Regional

Administrators by EPA Delegations Nos. 14-14-A and 14-14-C and further delegated to the Unit Manager, Office of Environmental Cleanup, Region 10. This Administrative Order on Consent for Access is also issued pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States. IDEQ's participation in this Administrative Order is pursuant to its authority under Idaho law, including but not limited to, Title 39, Chapters 1 and 44 of the Idaho Code.

2. Metals hereby consents and agrees to comply with and be bound by the terms of this Order. EPA, IDEQ and Metals agree that Metals' consent to this Order, and its actions in accordance with this Order, shall not in any way constitute or be construed as an admission of any liability, which Metals expressly denies, or as an agreement to any legal or factual matters set forth in this Order, and, except in a proceeding to enforce this Order, shall not be admissible into evidence to establish any liability or legal or factual matter.

II. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA in such regulations. Whenever terms listed below are used in this Order, the following definitions shall apply:

a. "Bunker Hill Facility" shall mean the areas where hazardous substances have come to be located in: (1) the South Fork of the Coeur d'Alene River and its tributaries, and their flood plains; (2) the main stem of the Coeur d'Alene River and its flood plain, including the lateral lakes and associated wetlands; and (3) Lake Coeur d'Alene;

b. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States;

c. "IDEQ" shall mean the State of Idaho Department of Environmental Quality;

d. "Reorganization Plan" shall mean the Third Amended Joint Chapter 11 Plan of Reorganization in In Re: Sunshine Mining and Refining Company et al, Jointly Administered, CIV No. 00-3409 (MFW), in the United States Bankruptcy Court for the

1 District of Delaware;

2 e. "Sunshine Antimony Plant" shall mean the Antimony Plant in the Coeur
3 d'Alene Basin owned and operated by Metals;

4 f. "Metals" shall mean Sunshine Precious Metals, Inc., and includes the
5 reorganized entity of that name existing after the effective date of the Reorganization Plan.

6 g. "Site" is the area shown on Attachment A to this Order and is located in
7 Shoshone County in northern Idaho, south of Interstate 90 along the road that accesses the
8 Sunshine Mine;

9 h. "United States" shall mean the United States of America, its departments,
10 agencies, and instruments.

11 **III. FINDINGS OF FACT**

12 4. The Bunker Hill Facility contains mining-related waste that is an actual or
13 potential source of releases of hazardous substances to the environment.

14 5. With Metals' agreement, the Repository will be constructed by EPA on land
15 owned by Metals.

16 6. The disposal of soils and sediments on the Site and construction of the
17 Repository will be consistent with and in accordance with the NCP.

18 7. Construction and use of the Repository is in the public interest because it will
19 immediately address environmental conditions of concern in the Coeur d'Alene Basin and
20 will address risks to human health posed by mining wastes.

21 8. Metals is concerned that its voluntary grant of access to EPA and compliance
22 with this AOC not subject it to liability under CERCLA or other authority for releases or
23 threatened releases of hazardous substances, pollutants or contaminants for which it would not
24 be liable but for its grant of access and compliance with this AOC.

25 **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

26 9. Based on the Findings of Fact set forth above, EPA has determined that:

27 a. The Site is part of the Bunker Hill Facility, which is a "facility" as defined

1 by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

2 b. The contaminants located at the Bunker Hill Facility include “hazardous
3 substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

4 c. There are actual or threatened “releases” of hazardous substances from the
5 Bunker Hill Facility and the Site, as defined by Section 101(22) of CERCLA, 42 U.S.C. §
6 9601(22).

7 d. The actual or threatened release of hazardous substances from the Site and
8 Bunker Hill Facility may present an imminent and substantial endangerment to the public
9 health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42
10 U.S.C. § 9606(a).

11 e. The actions required by this Order are necessary to protect the public
12 health, welfare, or the environment in accordance with Section 106(a) of CERCLA, and are
13 consistent and in accordance with the NCP and CERCLA.

14 V. ORDER

15 10. Based upon the foregoing Findings of Fact, Conclusions of Law,
16 Determinations, and the Administrative Record for the Facility, it is hereby ordered and
17 agreed as follows:

18 a. Metals shall, at least thirty (30) days prior to the conveyance of any interest
19 in real property at the Site, give written notice to any transferee other than IDEQ that the
20 property is subject to this Order, along with written notice to EPA and IDEQ of the proposed
21 conveyance, including the name and address of the transferee. Metals agrees to require its
22 successor to comply with the immediately preceding sentence and the requirements set forth
23 in Paragraph b. below.

24 b. For eighteen months after the Effective Date of this Agreement, Metals
25 shall grant EPA and IDEQ access to Metals-owned or controlled property within the Site for
26 purposes of EPA’s construction and use of the Site as a repository.

27 c. EPA agrees to make the Site available to third parties for disposal of

1 contaminated soils and sediments, and EPA will oversee such disposal, except that EPA may
2 refuse the disposal of any material that EPA deems unsuitable for disposal at the Site. As
3 long as Metals owns the Site, EPA shall refer to Metals any third party seeking the disposal of
4 more than three cubic yards of contaminated soils or sediments at the Site, for Metals to
5 negotiate the payment of a tipping fee to Metals.

6 VI. EPA ON-SCENE COORDINATOR/REMEDIAL PROJECT MANAGER

7 11. EPA has appointed Nicholas Ceto as the On-Scene Coordinator/Remedial
8 Project Manager ("OSC/RPM") for this response action. The OSC/RPM shall be responsible
9 for overseeing the proper and complete implementation of this Order consistent with the NCP.

10 12. EPA and IDEQ shall comply with any and all applicable laws and regulations
11 with respect to the Site, including any and all applicable monitoring and reporting
12 requirements.

13 VII. DUE CARE/COOPERATION

14 13. Metals shall exercise due care at the Site with respect to any mining materials
15 already existing on the Site and shall comply with all applicable local, State, and federal laws
16 and regulations. Metals recognizes that the implementation of response actions at the Site
17 may interfere with its use of the Site, and may require closure of its operations or a part
18 thereof. Metals agrees to cooperate fully with EPA and IDEQ in the implementation of
19 response actions at the Site and further agrees not to interfere with such response actions.
20 EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts
21 to minimize any interference with Metals' operations by such entry and response. In the event
22 Metals becomes aware of any action or occurrence which causes or threatens a release of
23 hazardous substances, pollutants or contaminants at or from the Site that constitutes an
24 emergency situation or may present an imminent threat to public health or welfare or the
25 environment, Metals shall in addition to complying with any applicable notification
26 requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately
27 notify EPA and IDEQ of such release or threatened release.

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1 authority of EPA or the United States or IDEQ to take, direct, or order all actions necessary to
2 protect public health, welfare, or the environment or to prevent, abate, or minimize an actual
3 or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or
4 solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA or IDEQ from
5 seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or
6 equitable action as it deems appropriate and necessary and as permitted by this Order, or from
7 requiring the future performance of additional activities pursuant to CERCLA or any other
8 applicable law as permitted by this Order.

9 IX. OTHER CLAIMS

10 17. By issuance of this Order, the United States and EPA and IDEQ assume no
11 liability for injuries or damages to persons or property resulting from any acts or omissions of
12 Metals.

13 18. This Order does not constitute a preauthorization of funds under Section
14 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2). Metals waives any claim to payment under
15 Sections 106(b), 111, and 112 of CERCLA, 42 U.S.C. §§ 9606(b), 9611, and 9612, against
16 the United States or the Hazardous Substance Superfund arising out of any action performed
17 under this Order.

18 19. No action or decision by EPA pursuant to this Order shall give rise to any right
19 to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

20 X. METALS COVENANT AND RESERVATION OF RIGHTS

21 20. Metals shall not institute or authorize any proceedings against, and Metals
22 covenants not to sue, the United States and IDEQ under Sections 107 or 113 of CERCLA, 42
23 U.S.C. Sections 9607 or 9613, based on: (a) releases of hazardous substances disposed at the
24 Site by EPA or an authorized representative in connection with EPA-authorized
25 environmental response actions related to the Facility; or (b) releases of hazardous substances
26 contained in wastes disposed at the Site by parties other than Metals, so long as such waste
27 disposals are authorized by EPA.

28 21. Nothing in this Order, except as specifically provided in Paragraphs 18, 19 and
29 20 of this Order, shall be construed as restricting Metals' right to lawfully challenge or object
30 to any future response actions that may be proposed at or affecting the Site, or as waiving,

1 limiting, or affecting other rights, claims, causes of action, or demands Metals may have
2 against any person under CERCLA, including with respect to natural resource damages, or
3 other federal, state, or common law.

4 XI. CONTRIBUTION PROTECTION

5 22. Metals shall be entitled to protection from contribution actions or claims as
6 provided in Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in
7 this Order. Matters addressed in this Order for purposes of contribution protection shall
8 include all claims or causes of action under Sections 106 and 107 of CERCLA, 42 U.S.C. §§
9 9606 & 9607, and Section 7003 of RCRA, 42 U.S.C. § 6973, for injunctive relief and
10 response costs with respect to the Site. Nothing in this Order precludes the United States,
11 IDEQ, the State or Metals from asserting any claims, causes of action or demands against any
12 persons not parties to this Order for indemnification, contribution, or cost recovery.

12 XII. INDEMNIFICATION

13 23. Metals agrees to indemnify, save, and hold harmless the United States and
14 IDEQ, their officials, agents, contractors, subcontractors, employees, and representatives from
15 any and all claims or causes of action arising from, or on account of, acts or omissions of
16 Metals, its officers, heirs, directors, employees, agents, contractors, subcontractors, receivers,
17 trustees, successors, or assigns, in complying with, and fulfilling obligations under, this
18 Order. In addition, Metals agrees to pay the United States and IDEQ all costs incurred by the
19 United States or IDEQ, including litigation costs arising from or on account of claims made
20 against the United States or IDEQ based on any of the acts or omissions referred to in this
21 paragraph.

21 XIII. MODIFICATION

22 24. Any requirements of this Order may be modified, in writing, by mutual
23 agreement of the Parties hereto.

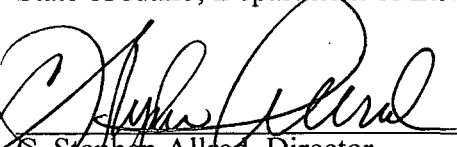
24 XIV. SEVERABILITY

25 25. If a court issues an order that invalidates any provision of this Order, Metals
26 shall remain bound to comply with all provisions of this Order not invalidated by the court's
27 order.

28 XV. EFFECTIVE DATE


1 So agreed on behalf of:

2 State of Idaho, Department of Environmental Quality

3 
4 C. Stephen Allred, Director
5 Department of Environmental Quality
6 State of Idaho


1-25-02
Date

7
8 Approved as to Form:

9
10 
11 Curt A. Fransen, Deputy Attorney General
12 Office of the Attorney General
13 State of Idaho

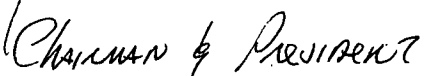
11/23/02
Date

1 The undersigned representative of Sunshine Precious Metals, Inc. certifies that he/she is fully
2 authorized to enter into the terms and conditions of this Order at the Site and to bind Metals to
3 this document.

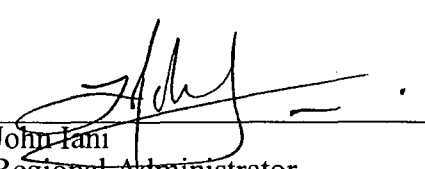
4 
5 _____
6 Name

Oct 31, 2001


Date

7 
8 _____
9 Title

1 This Order at the former Sunshine Lower Big Creek Tailings Pond is so ORDERED and
2 Agreed.

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5
6 
7 John Jani
8 Regional Administrator
9 Region 10
10 U.S. Environmental Protection Agency

1/22/02
Date

11 
12 Thomas L. Sansonetti
13 Assistant Attorney General
14 Environment and Natural Resources
15 Division
16 U.S. Department of Justice

1.14.02
Date